

## Department of Energy

## § 710.4

AUTHORITY: 42 U.S.C. 7101, *et seq.*; 50 U.S.C. 2401, *et seq.*; Pub. L. 83-703, sec. 141, 68 Stat 940, as amended (42 U.S.C. 2161); Pub. L. 83-703, sec. 145, 68 Stat 942, as amended (42 U.S.C. 2165); Pub. L. 83-703, sec. 161, 68 Stat 948, as amended (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949-1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 12958, 3 CFR 1995, comp., p. 333; E.O. 12968, 3 CFR 1995, comp., p. 391.

### Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

SOURCE: 59 FR 35185, July 8, 1994, unless otherwise noted.

#### GENERAL PROVISIONS

##### § 710.1 Purpose.

(a) This subpart establishes the criteria, procedures, and methods for resolving questions concerning the eligibility of individuals who are employed by, or applicants for employment with, Department of Energy (DOE) contractors, agents, and access permittees, individuals who are DOE employees or applicants for DOE employment, and other persons designated by the Secretary of Energy, for access to Restricted Data or special nuclear material, pursuant to the Atomic Energy Act of 1954, as amended, or for access to national security information.

(b) This subpart is published to implement: Executive Order 12968, 60 FR 40245 (August 7, 1995); Executive Order 12958, 60 FR 19825 (April 20, 1995); Executive Order 10865, 25 FR 1583 (February 24, 1960), as amended; and Executive Order 10450, 18 FR 2489 (April 27, 1954), as amended. This subpart also provides for public information: selected provisions of the Atomic Energy Act of 1954, as amended, set forth in appendix A to this subpart; and the 1997 Adjudicative Guidelines approved by the President and set forth in appendix B to this subpart.

[59 FR 35185, July 8, 1994, as amended at 66 FR 47062, Sept. 11, 2001]

##### § 710.2 Scope.

The criteria and procedures outlined in this subpart shall be used in those cases in which there are questions of eligibility for DOE access authorization involving:

(a) Employees (including consultants) of, and applicants for employment with, contractors and agents of the DOE;

(b) Access permittees of the DOE and their employees (including consultants) and applicants for employment;

(c) Employees (including consultants) of, and applicants for employment with, the DOE; and

(d) Other persons designated by the Secretary of Energy.

##### § 710.3 Reference.

The pertinent sections of the Atomic Energy Act of 1954, as amended, relative to this regulation are set forth in Appendix A to this subpart.

##### § 710.4 Policy.

(a) It is the policy of DOE to provide for the security of its programs in a manner consistent with traditional American concepts of justice and fairness. To this end, the Secretary has established criteria for determining eligibility for access authorization and procedures that will afford those individuals described in § 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

(b) It is also the policy of DOE that none of the procedures established by DOE for determining eligibility for access authorization shall be used for an improper purpose, including any attempt to coerce, restrain, threaten, intimidate, or retaliate against individuals for exercising their rights under any statute, regulation or DOE directive. Any DOE officer or employee violating, or causing the violation of this policy, shall be subject to appropriate disciplinary action.

(c) If the individual is currently awaiting a hearing or trial, or has been convicted of a crime punishable by imprisonment of six (6) months or longer, or is awaiting or serving a form of preprosecution probation, suspended or deferred sentencing, court ordered probation, or parole in conjunction with

## §710.5

## 10 CFR Ch. III (1–1–06 Edition)

an arrest or criminal charges initiated against the individual for a crime that is punishable by imprisonment of six (6) months or longer, DOE may suspend processing an application for access authorization until such time as the hearing, trial, criminal prosecution, suspended sentencing, deferred sentencing, probation, or parole has been completed.

(d) DOE may suspend processing an application for access authorization if sufficient information about the individual's background cannot be obtained to meet the investigative scope and extent requirements for the access authorization requested.

(e) DOE may suspend processing an application for access authorization until such time as a question regarding an individual's national allegiance is resolved. For example, if an individual is exercising rights of citizenship conferred by a country other than the United States, DOE will be concerned with whether granting access authorization to that individual constitutes an unacceptable national security risk.

(f) DOE may suspend processing an application for access authorization whenever an individual fails to fulfill the responsibilities described in §710.6.

(g) If an individual believes that the provisions of paragraph (c), (d), or (e) of this section have been inappropriately applied, a written appeal may be filed with the Director, Office of Safeguards and Security, DOE Headquarters, within 30 calendar days of the date the individual was notified of the action. The Director, Office of Safeguards and Security, shall act on the written appeal as described in section 710.6(c).

[59 FR 35185, July 8, 1994, as amended at 66 FR 47062, Sept. 11, 2001]

### §710.5 Definitions.

(a) As used in this subpart:

*Access authorization* means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.

*Classified Matter* means the material of thought or expression that is classified pursuant to statute or Executive Order.

*DOE Counsel* means a DOE attorney assigned to represent DOE in pro-

ceedings under this subpart. DOE Counsel shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

*Hearing Officer* means a DOE attorney or senior management official appointed by the Director, Office of Hearings and Appeals, pursuant to §710.25. A Hearing Officer shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

*Local Director of Security* means the Operations Office or Naval Reactors Office Security and Safeguards Division Director, or other similar title; for Washington, DC area cases, the Director, Headquarters Operations Division; for the Idaho Operations Office, the Program Manager, Security and Resource Management Division; for the Pittsburgh Naval Reactors Office, the Director, Contracts and Securities Division; for the Savannah River Operations Office, the Director, Internal Security Division; and any person designated in writing to serve in one of the aforementioned positions in an "acting" capacity.

*National Security Information* means any information that has been determined, pursuant to Executive Order 12958 or any predecessor Order, to require protection against unauthorized disclosure and that is so designated.

*Operations Office Manager or Manager* means the Manager of a DOE Operations Office (Albuquerque, Chicago, Idaho, Nevada, Oak Ridge, Oakland, Richland, or Savannah River), the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schenectady Naval Reactors Office, and, for Washington, DC area cases, the Director, Office of Safeguards and Security.

*Secretary* means the Secretary of Energy, as provided by section 201 of the Department of Energy Organization Act.

*Special nuclear material* means plutonium, uranium enriched in the isotope 233, or in the isotope 235, and any other material which, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been